

Exhibit 10

September 20, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HERMES INTERNATIONAL AND HERMES OF
PARIS, INC.

Plaintiff, :

- against -

MASON ROTHSCHILD,

Defendant. :

-----X

September 20, 2022
11:05 a.m.

** CONFIDENTIAL **

VIDEOTAPED EXAMINATION BEFORE TRIAL of
DR. BRUCE ISAACSON, an Expert Witness on
behalf of the Plaintiffs herein, taken by the
Defendant, pursuant to Court Order, held at
the above-mentioned time via videoconference
by all parties, before Michelle Lemberger, a
Notary Public of the State of New York.

September 20, 2022

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ALSO PRESENT:

Darrak Lighty - videographer

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2 company Hermes. That was their answer. It's
3 very clear who they think makes or provides
4 the items shown on the web page.

5 So if someone had answered that in a
6 way that made it clear that they thought that
7 Hermes was shown on the web page or Birkin
8 was shown on the web page, that's the
9 confusion answer.

10 There's -- Dr. Neal, in his rebuttal
11 report, seems to indicate that there are two
12 different kinds of confusion in this case.
13 And there's only one kind of confusion that
14 I'm basing my opinions on. And that's where
15 someone sees the MetaBirkins web page and
16 makes a cognitive connection in their own
17 mind between that web page and Hermes or
18 Birkin. That's what my survey measures.

19 Q. What is the item that's shown on the
20 web page?

21 A. The web page shows a number of
22 items, but most of those items are variants
23 of Hermes bags. There's also some text on
24 the web page, there's a bunch of other things
25 on the web page, but most of what's on that

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2 likely of confuse surveys work.

3 The fact that they may think that
4 someone else is making the NFT, that's not
5 relevant to anything. They've made a
6 cognitive connection between a bag that
7 they're shown that is never labeled as an
8 Hermes bag in the survey, but they've
9 identified it as an Hermes bag twice.

10 They're thoughtful, they can see
11 what's going on in the survey, and they made
12 a connection between a bag that is not an
13 Hermes bag. It's some variant of an Hermes
14 bag that Mr. Rothschild created, but this
15 person looked at that and said, Wow, that's
16 an Hermes bag. I don't see where there's any
17 question that this respondent is confused.

18 Q. What does question 1 ask? What is
19 question 1?

20 A. Question 1 asks what company,
21 companies, person or people do you think
22 makes or provides the items shown on the web
23 page. There's more to it, but that's the --
24 that's the essence of it.

25 Q. And the response here refers only to

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2 hadn't been invented.

3 So it's just, there's a lot
4 different in the context today versus when
5 Mr. Warhol was working with Campbell soup
6 cans.

7 Q. Okay. So taking that hypothetical
8 example of the survey over the Campbell Soup
9 cans, sitting here today, you can't say
10 whether someone who gave a response in such a
11 survey distinguishing between the painting
12 and the soup was making a distinction between
13 two different things?

14 MR. FERGUSON: Objection.

15 A. I think I said it. There's a lot to
16 think about with regard to a survey like
17 that, and I'd have to think about with regard
18 to the design. But I can say that the way
19 that likelihood of confusion surveys work is
20 you're looking for cognitive connections.

21 You're looking for people who see
22 one item and make a connection to another
23 item. So in this case, what my survey
24 measures is whether when someone looks at the
25 MetaBirkins web page and sees a fur-covered

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2 Hermes and also MetaBirkins?

3 A. Yes.

4 Q. Isn't it possible they didn't know
5 if you were asking about the image or what's
6 referenced in the image? So they said both
7 here?

8 A. I don't think that the phrasing of
9 the question is at all ambiguous about what
10 it is asking about. So I think the answer to
11 your question is no. But I can't say for
12 sure how they interpreted the question.

13 Q. And doesn't their response to
14 question 2 demonstrate that they understood
15 exactly what the relationship was?

16 MR. FERGUSON: Objection.

17 A. I think their answer to question 2
18 demonstrates just how confused they are by
19 the page, and demonstrates as well that that
20 disclaimer which is sometimes the case for
21 disclaimers that are not sufficiently clear
22 is exacerbating their confusion.

23 Q. What reflects confusion about a
24 disclaimer in this response to question 2?

25 A. Well, if you go to their response to

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2 question 1, they say right off the bat, Based
3 on descriptions disclaimer, I assume what
4 they are shorthanding there is based on
5 descriptions and the disclaimer. It's Hermes
6 bags -- Hermes Birkin bags or MetaBirkins.

7 So their answer to the first
8 question indicates that they saw something in
9 the disclaimer that made them confused. Not
10 that it made them unconfused, that disclaimed
11 the relationship between the page and Hermes,
12 but rather led them to believe, based on
13 seeing the word Hermes in the disclaimer
14 possibly, that they were confused.

15 And then when I go to question 2, I
16 see that they say the web page name and the
17 description states that it's MetaBirkins, so
18 they understand that, what the name of the
19 description says, and then we get a sentence
20 that starts with but.

21 But also, and now they go on to say
22 that the web page, that the disclaimer
23 clearly states that they're not affiliated
24 with Hermes, who is the actual registered
25 trademark owner of Birkin bags.

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2 So they're, obviously, seeing bags
3 on the web page. They've made the
4 association with Hermes, and that's
5 sufficient to demonstrate that they are
6 confused. And the disclaimer is adding to
7 their confusion about what it is that the web
8 page is communicating.

9 Q. Doesn't the response here to
10 question 2 show that the disclaimer told this
11 respondent about the source of the web page?

12 A. I can't tell. I don't know why in
13 question 2 they started with the word but.
14 And I also don't know why in response to
15 question 1, they seemed to indicate that the
16 disclaimer is increasing their confusion.

17 Q. Isn't their use of "but" also in
18 this response to question 2 giving an
19 additional reason here?

20 A. It could potentially be an
21 additional reason, but I think it's more
22 likely to be given that it's coming in
23 conjunction with other questions, other
24 responses, I think it's more likely to be on
25 the one hand on the other hand. Or in

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2 person.

3 Somehow the assumption behind many
4 of the questions that you're asking me is
5 that there's more than one way to be confused
6 or there's different kinds of confusion. And
7 as I go back to the original place we started
8 a few minutes ago, it's cognitive connection.
9 Do they see the MetaBirkins web page and make
10 a connection to Hermes or to Birkin. And the
11 answer for this person is yes. And whatever
12 else is going on is not relevant to that
13 central inquiry.

14 You cannot provide an answer
15 referencing the kinds of things that the
16 survey is looking to measure, unless somehow
17 you look at the MetaBirkins web page and you
18 make that connection to something else.

19 Q. Okay. Let's move on.

20 I want to talk about now your
21 handbag survey. Am I correct that you
22 document two surveys in your report?

23 A. Yes.

24 Q. And you call one survey the NFT
25 purchaser survey and the other one the